

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH CLARK	:	CIVIL ACTION
854 Glenn Street	:	
Philadelphia, PA 19115	:	CASE NO. 2:20-cv-5878
	:	
vs.	:	ARBITRATION CASE
	:	
PROGRESSIVE ADVANCED	:	
INSURANCE COMPANY	:	
6300 Wilson Mills Road	:	
Mayfield Village, OH 44143	:	

COMPLAINT

I. NATURE OF THE ACTION

1. Plaintiff, Joseph Clark, seeks damages for underinsured motorist coverage arising out of an accident in which he suffered serious personal injuries when he was struck by a vehicle while riding his bicycle on November 5, 2019.

II. JURISDICTION AND VENUE

2. The jurisdiction of this Court is based upon the diversity of citizenship of the parties hereto, 28 U.S.C. § 1332.

III. THE PARTIES

3. Plaintiff, Joseph Clark, is an adult individual residing in Philadelphia County, Pennsylvania.

4. Defendant, Progressive Advanced Insurance Company, is an Ohio corporation and is an insurance company licensed to transact business in the Commonwealth of Pennsylvania.

IV. MATERIAL FACTS

5. On or about November 5, 2019, at approximately 8:13 p.m., plaintiff, Joseph Clark, was operating his bicycle in an easterly direction on Spruce Street near its intersection with 33rd Street and South Street in the City of Philadelphia, Philadelphia County, Pennsylvania.

6. At the aforesaid time, date and place, Solomon Beckett of Eddystone, Pennsylvania, was operating his 2017 Hyundai Sonata on South Street near its intersection with Spruce Street and 33rd Street.

7. As plaintiff, Joseph Clark, was properly traveling through the intersection, Solomon Beckett entered the intersection in an attempt to make a left-hand turn onto 33rd Street, a one-way street in the opposite direction of Mr. Beckett's intended path of travel, and crashed into plaintiff's bicycle, causing Joseph Clark to fall to the ground and suffer serious personal injuries.

8. As a direct and proximate result of the accident, plaintiff, Joseph Clark:
- (a) suffered injuries, some of which are or may be permanent, to the head, neck, back, spine, torso and various parts of the body;
 - (b) suffered a left calcaneal (heel bone) fracture;
 - (c) suffered the inability to move and/or otherwise walk without pain following his injury and a possible future impairment of his left foot;
 - (d) suffered impaired strength and range of motion in his left foot;
 - (e) suffered lacerations and contusions throughout the body;
 - (f) suffered a severe and possible permanent shock to his nervous system;
 - (g) was unable to and will in the future be unable to attend to his daily occupation; and
 - (h) has required and will require hospitalization and/or medical care and treatment and has been required and will be required to incur substantial expenses for such care and treatment.

9. The above damages were directly caused by the negligence of the at-fault driver, Solomon Beckett, and were incurred without contributory negligence or assumption of the risk on the part of plaintiff, Joseph Clark, or an opportunity for plaintiff, Joseph Clark, to avoid the accident.

10. Solomon Beckett, the at-fault driver and owner of the at-fault vehicle, does not have adequate insurance to fully compensate the plaintiff for the damages he sustained.

11. Solomon Beckett was insured by GEICO Insurance Company with liability limits of Fifteen Thousand Dollars (\$15,000.00).

12. The claims of plaintiff, Joseph Clark, were settled against GEICO's insured, Solomon Beckett, for the policy limits of Fifteen Thousand Dollars (\$15,000.00).

V. CAUSE OF ACTION – BREACH OF CONTRACT

13. At the time of the accident, the at-fault vehicle was underinsured and did not provide adequate coverage for the claims and damages asserted by plaintiff, Joseph Clark.

14. At the time of the accident, plaintiff, Joseph Clark, had in force a policy of automobile insurance issued by defendant, Progressive Advanced Insurance Company, Policy Number 905803780. Said policy of insurance contained a provision for underinsured motorist coverage which provided, among other things, insurance coverage for bodily injuries an insured is legally entitled to recover from the owner or operator of an underinsured motor vehicle.

15. The policy issued by defendant, Progressive Advanced Insurance Company, to Joseph Clark provides for underinsured motorist coverage of One Hundred Thousand Dollars (\$100,000.00).

16. By letter dated April 20, 2020, plaintiff's counsel advised defendant, Progressive Advanced Insurance Company, of the proposed settlement with GEICO's insured and requested Progressive's permission to settle plaintiff's claims against the at-fault driver for Fifteen Thousand Dollars (\$15,000.00), with a credit to be given to Progressive of Fifteen Thousand Dollars (\$15,000.00) towards plaintiff's underinsured motorist claim.

17. By letter dated May 22, 2020, defendant, Progressive Advanced Insurance Company, waived its subrogation rights against the at-fault driver and consented to the settlement of plaintiff's claims for Fifteen Thousand Dollars (\$15,000.00).

18. All of plaintiff's medical records were sent to defendant, Progressive Advanced Insurance Company, with plaintiff's counsel's letter of April 20, 2020.

19. Plaintiff's medical records reflect that as a result of the negligence of the at-fault underinsured driver, Joseph Clark suffered serious injuries including a left calcaneal (heel bone) fracture, the inability to move and/or otherwise walk without pain, impaired strength and range of motion in his left foot, and a possible future impairment of his left foot.

20. By e-mail dated September 17, 2020, defendant, Progressive Advanced Insurance Company, offered Two Thousand Five Hundred Dollars (\$2,500.00) to settle plaintiff's underinsured motorist claim.

21. In light of the seriousness of the injuries he suffered, plaintiff, Joseph Clark, believes his claim is valued in excess of Seventeen Thousand Five Hundred Dollars (the tortfeasor's coverage of \$15,000.00 and Progressive's offer to settle his underinsured claim for \$2,500.00).

22. Plaintiff, Joseph Clark, has fully complied with the terms of the contract with defendant, Progressive Advanced Insurance Company, and is entitled to be paid by the defendant

underinsured motorist damages in an amount which will fully compensate him for the injuries he suffered in the November 5, 2019, accident.

23. Defendant, Progressive Advanced Insurance Company, has breached its contract with plaintiff, Joseph Clark, by failing to pay him underinsured motorists coverage in a fair and reasonable amount which will fully compensate him for the damages he suffered.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Joseph Clark, asks for judgment in his favor on all counts and requests the following relief:

- (a) an award of compensatory damages in an amount that exceeds the \$75,000 federal diversity jurisdiction threshold set forth in 28 U.S.C. § 1332;
- (b) such interest as allowed by law; and
- (c) such other relief as the Court deems equitable and just.

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